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JUL 25 2002

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:

IRMA COOPER,
Debtor

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CASE NO. 400-44522-DML

MEMORANDUM OPINION AND ORDER

Under consideration by the Court is its Order Denying Motion to Supplement Record and Setting Hearing entered on June 6, 2002 (the "Cause Order"). A copy of the Cause Order is appended to this memorandum opinion.

By the Cause Order the Court directed debtor Irma Nell Cooper ("Debtor" or "Cooper") to appear and show that she had complied with the requirements of FED.R.BANKR. P.9011(b) in filing the motion to supplement the record (the "Motion") which was addressed by the Cause Order.

As required by the Cause Order, it was served upon persons named by Cooper in the Motion, the U.S. trustee and the Chapter 13 trustee.

The Court held hearings on the Cause Order on June 17 and July 15, 2002. Evidence was received at those hearings from Alicia Dewey ("Dewey") and Bruce Wilson ("Wilson"), attorneys attacked by Cooper in the Motion or elsewhere, and from employees of the clerk of the bankruptcy court. Cooper did not appear (as hereinafter described) at either hearing. The Court will also take notice of the record of this case in reaching its conclusion on the Cause Order.

The matter at bar is a core proceeding over which the Court has jurisdiction pursuant to 28 U.S.C. §§1334(a) and 157(b)(2). This memorandum opinion constitutes the Court's findings of fact and conclusions of law. See FED. R. BANKR. P. 7052 and 9014.

I. Background

Cooper commenced this case by filing a petition on September 1, 2000. Though initially represented by attorney Alice Holland, pursuant to the authority of an order entered on November 19, 2001, Holland's representation was terminated, and Cooper has since acted *pro se*.¹ Cooper has been aggressive in her use of the courts since the commencement of her case. She has not only filed numerous motions and purported adversary proceedings² in this Court; she has commenced litigation in state court and in federal court.³ She has contested any motion filed in her bankruptcy case and has attempted to appeal virtually every ruling of the Court.

In the course of the hearings held in this case and in the pleadings she has filed, Cooper has regularly accused various persons, including Wilson and Dewey, of participating in fraudulent and criminal activities to Cooper's detriment.⁴ She has relied on these allegations as well as her age and physical condition in defending against motions seeking relief from the automatic stay.⁵

While the Court has attempted to focus Cooper on other, relevant evidence in hearings in this case, it has made every effort to ensure that Cooper has had a full opportunity to be heard. The Court has carefully reviewed everything filed by Cooper, despite its form and, often, unintelligibility.

¹ Holland, like Wilson and Dewey, has since drawn Cooper's wrath. See the portion of the Motion quoted in the Cause Order.

² See docket entries for 9/21/01, 11/6/01 (multiple entries), 11/13/01 (multiple entries), 11/14/01 (multiple entries), 12/7/01 (multiple entries), 12/13/01 (multiple entries), 1/22/02 (multiple entries), 2/21/02, 2/28/02 (multiple entries). Cooper's filing are mostly without merit and often slanderous in content.

³ For example, see this Court's Memorandum Opinion and Order entered on February 14, 2002 and Debtor's Exhibit 4, introduced at the hearing on A&M Investment's motion for relief from stay, June 3, 2002.

⁴ See, e.g., Cause Order; Debtor's Motion to Add Information Regarding State District Case #360-322937-01 filed May 23, 2002.

⁵ See, e.g., hearing on A&M Investment's motion for relief from stay.

If Cooper's repeated allegations of wrongdoing by others have not been relevant to the issues before the Court, their cumulative effect has been to raise for the Court the concern that Cooper is abusing the bankruptcy process. As a result, when reviewing the Motion, the Court concluded it was necessary to inquire into Cooper's foundation for the statements she was making about counsel whom the Court believed to be reputable. Accordingly, pursuant to its authority under FED. R. BANKR. P. 9011(c)(1)(B), the Court issued the Cause Order.

The Cause Order was served on Cooper by certified and first class mail and on the other persons named by the Court by first class mail. On the morning of the June 17 hearing scheduled by the Cause Order, Cooper contacted Sandy Chonody, courtroom deputy and scheduling clerk. Cooper advised Ms. Chonody that she had been out of town and so had no notice of the hearing until she saw on PACER that it was scheduled. Cooper indicated to Ms. Chonody that she would not attend the June 17 hearing and demanded a continuance. At the Court's direction, Ms. Chonody advised Cooper that the hearing would nevertheless go forward, since it was too late to advise the other persons noticed of a change in the time of hearing.⁶ Moreover, Cooper should have received the first class mail copy of the Cause Order well prior to June 17.⁷ The Court therefore proceeded with the hearing.

At the conclusion of the hearing, however, assistant U.S. trustee William Parkinson (who, at his request, was attending the hearing by telephone) announced he had received no notice of the hearing. The Court believed further inquiry was appropriate, and Mr. Parkinson later attempted to

⁶ Ms. Chonody testified to these facts on June 17.

⁷ The certified mail copy of the notice sent to Cooper was later returned to the Court as not accepted by deliverer. The envelope indicates Cooper refused delivery on June 7 and 11, from which the Court might (but does not) infer that Cooper lied to Ms. Chonody about being out of town during the time prior to the June 17 hearing. Certainly Cooper knew the Court was attempting to communicate with her, and she refused to accept delivery of that communication.

determine whether, in fact, the Cause Order had been delivered to his office and then misdirected. Because Mr. Parkinson could not verify delivery to the U.S. trustee's office and this cast doubt on the efficacy of service by first class mail of the Cause Order, the Court concluded that Cooper should be given a second opportunity to respond to the Cause Order. The Court therefore entered on June 21, 2002 an Order Setting Hearing to Consider Possible Rule 9011 Violation, which reset the Cause Order for hearing on July 15, 2002, directing service by certified mail on the U.S. trustee and by U.S. Marshal on Cooper. In addition, the June 21, 2002 order resetting the Cause Order was transmitted to Cooper by certified mail.

The U.S. Marshal attempted to serve Cooper at her home on five occasions. The Marshal was not successful in serving Cooper, but his form USM-285 reflects that, though Cooper did not answer her door, the same vehicle was in Cooper's driveway on the occasion of four of the five attempts at service. In addition Cooper signed the certified mail receipt for the June 21 order setting the July 15, 2002 hearing on July 11, 2002.

The Court finds Cooper had notice of both the June 17 and July 15 hearings. The Court further finds that Cooper evaded service by certified mail of the Cause Order and Marshall's service of the July 15 setting.

Cooper failed to appear at the July 15 hearing.⁸ Wilson and Dewey appeared and the U.S. trustee again attended by telephone. Based on testimony of Dewey on June 17 and statements of Dewey and Wilson on July 15, the Court finds that there was no foundation for Cooper's allegations in the Motion of wrongful or criminal conduct by Dewey. The Court further finds, based on the

⁸ On July 16 representatives of the Chapter 13 trustee advised an employee of the Court that Cooper had contacted her on July 15 and stated she was having "a stroke, a heart attack or both" and so would not attend the July 15 hearing. Even if the Court considered this third-hand, after-the-fact notification relevant, Cooper's distress appears to have been short-lived, as she filed pleadings on July 16 and 17. In light of the Court's ruling, Cooper will, in any event, have an opportunity to revisit the proceedings of July 15.

uncontradicted statements of Dewey and Wilson, that Cooper failed to make inquiry concerning her allegations in the Motion and other pleadings as required by FED. R. BANKR. P. 9011(b).

II. Discussion

Cooper has violated Rule 9011(b)(1), (2) and (3). Having been properly noticed, she is now subject to sanction.

That Cooper is acting as her own attorney does not insulate her from the consequences of her actions. *Pro se* litigants are subject to sanction where they have violated Rule 9011. See 10 COLLIER ON BANKRUPTCY ¶ 9011.08[3][6] (15th ed. rev. 2002); see also *Colorado ex rel. Colorado Judicial Dep't v. Flemin*, 726 F. Supp. 1216 (D. Colo. 1989); *Schramek v. Jones*, 161 F.R.D. 119 (M.D. Fla. 1995). Culminating in the Motion, Cooper has repeatedly made accusations against other persons without inquiry or foundation. The conclusion is inescapable that Cooper knew her allegations to be untrue and interposed them as harassment or worse.

Under these circumstances, Cooper must be sanctioned to prevent future conduct abusive of the legal system and harmful to others. As discussed, *infra*, sanctions must also be imposed to provide recompense for monetary (or time) loss incurred by her victims.

Cooper has also intentionally evaded service of orders of the Court and has knowingly and wilfully ignored such orders. Were this a Chapter 7 case, Cooper could be denied a discharge for this reason. 11 U.S.C. § 727(a)(6).

Besides failing to respond to the Cause Order, Cooper has abused the jurisdiction of this Court and the chapter 13 process. Rather than truly attempting to rehabilitate herself through chapter 13, Cooper has used this Court and the automatic stay of Section 362(a) of the Bankruptcy Code as shelter while slandering Wilson, Dewey and others and harassing various persons through the filing

of frivolous suits and motions.⁹ Cooper had the right to initiate a chapter 13 case. Congress has made Chapter 13 available to any person who qualifies under 11 U.S.C. § 109. *See* 2 COLLIER ON BANKRUPTCY ¶ 109.06 (15th ed. rev. 2002). Having the right to commence a bankruptcy case, however, does not amount to an entitlement to the relief provided by the Bankruptcy Code. *See Toibb v. Radloff*, 501 U.S. 157, 165, 11 S.Ct. 2197, 2202 (1991). *Johnson v. Home State Bank*, 501 U.S. 78, 87, 111 U.S. 2150, 2156 (1991). A failure by a debtor to proceed under Chapter 13 in good faith may result in a loss of the benefits of that Chapter through dismissal of his or her case.

This Court may act *sua sponte* to dismiss a chapter 13 case. 11 U.S.C. § 105(a); *In re Hammers*, 988 F.2d 32, 34-5 (5th Cir. 1993); *Toles v Powers*, 1999 U.S. Dist. Lexis 22419,*9 (N.D. Tex. 1999). If the debtor is acting in bad faith, this constitutes grounds for dismissal. *Toles*, 1999 U.S. Dist. Lexis at *9.

In deciding whether dismissal is appropriate for want of good faith, the Court should consider the totality of the circumstances. *See In re Love*, 957 F.2d 1350, 1355 (7th Cir. 1992). Among the circumstances the Court should consider is the debtor's response to its orders. *See Toles*, 1999 U.S. Dist. Lexis at *9. In addition, in the instant case, the debtor's abuse of the Court and the process and her failure to comply with Rule 9011 constitute telling evidence demonstrating her bad faith.

Cooper has conducted herself in a fashion that calls for forfeiture of the benefits of the Code. Under *Toles* and *Hammers* this Court could order dismissal of Cooper's case without further proceedings. Nonetheless, the Court will offer Cooper one, final chance to demonstrate that she should not be denied relief under chapter 13.

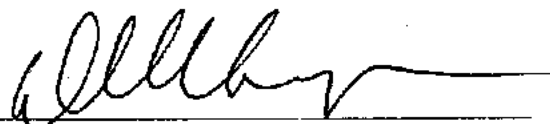
Cooper has pending both a modified plan and a recently filed motion for hardship discharge.

⁹If Debtor is entitled to affirmative relief against any person, such entitlement is property of her Chapter 13 estate. 11 U.S.C. §§541(a) and 1306(a). Thus any cause of action owned by Debtor is subject to the Court's jurisdiction and control. 28 U.S.C. § 1334(e)

The Court believes that these matters should be considered in conjunction with the issue of whether this case should be dismissed with prejudice. The Court will hold a hearing on Debtor's modified plan and motion for hardship discharge and on the amount of sanctions to be awarded against Cooper on August ^{at 10:30} 22, 2002. The Court will also consider at that time dismissal of Cooper's chapter 13 case. Pending the hearing set pursuant to the preceding paragraph or further order of this Court, Irma Nell Cooper shall be stayed and enjoined from initiating or continuing any cause of action in any jurisdiction, state or federal, which cause of action is property of said Irma Nell Cooper's estate; said Irma Nell Cooper is specifically stayed and enjoined from commencing or continuing any cause of action against any attorney who has not been engaged to represent her or against any other officer or employee of this Court, the U.S. trustee or the Chapter 13 trustee, which cause of action relates to such attorney, officer or employee's performance of his or her obligations or duties as an attorney or officer or employee of the Court.

It is so ORDERED.

Signed this the 25th day of July, 2002.



DENNIS MICHAEL LYNN,
UNITED STATES BANKRUPTCY JUDGE

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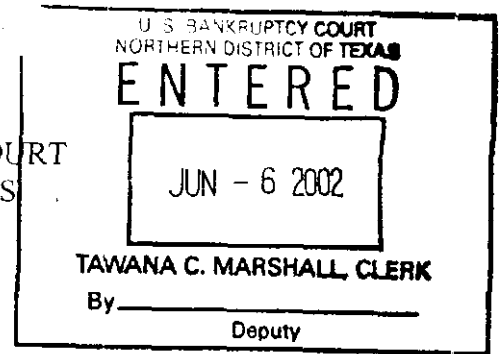
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



IN RE:

IRMA COOPER,
Debtor

§
§
§
§

CASE NO. 400-44522-DML

ORDER DENYING MOTION TO SUPPLEMENT RECORD AND SETTING HEARING

The above named Debtor has filed her "Motion to Add Information in Support of Denial of Lift to Stay A&M [sic] Investment and in Evidence of Fraud by A&M Investment and Request for Rehearing" (the "Motion"). The Court has already decided the underlying matter. Upon review of the Motion the Court has determined the information contained in the Motion would not affect its decision. Moreover, the Debtor had all the information referred to in the Motion when the underlying matter was heard by the Court on June 3, 2002. She did not at that time seek to present that "information" she now wishes to include in the record. For these reasons, the Motion is DENIED.

Moreover, Debtor has made allegations in the Motion which, unless capable of proof, would appear to violate FED. R. BANKR. P.9011(b). Specifically, in the Motion Debtor states:

Legal counsel Alicia Dewey also has conspired to conceal federal bankruptcy fraud thus defeating the provisions of Title 11-18 USC & 1961-1968-RICO knowingly and willingly-even unto inflicting pain/suffering/mental anguish upon disabled senior white citizen gravely injured-fighting for the roof over her head. Conspiring with Debtor's legal counselor Alice Holland-Wm K. Clary Atty for Edwin E. Presley-battered Debtor with non existent civil suit for 8 grueling months inflicting grievous pain/suffering/mental anguish unto Debtor. Needlessly. All attorneys conspired willingly and knowingly in blatant effort to defeat provisions of Title 11-18 USC & 1961-1968.

**ORDER DENYING MOTION TO SUPPLEMENT
RECORD AND SETTING HEARING**

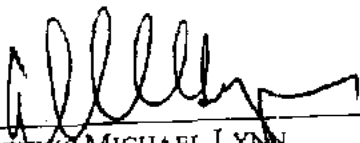
The Debtor in this case has previously made similar allegations regarding various persons. The Court questions whether the Debtor is making an "inquiry reasonable under the circumstances" (Rule 9011(b)) before filing pleadings containing such allegations.

Pursuant to Rule 9011(c)(1)(B) this Court may require a party to "show cause why it has not violated" Rule 9011(b). The Court believes such a procedure is appropriate in this case. Accordingly, it is

ORDERED that Irma Nell Cooper appear on the 17 day of June, 2002 at 11:00 o'clock a.m. before the undersigned bankruptcy judge and show cause why she should not be found to have violated FED. R. BANKR. P. 9011(b) and why, if she fails to do so, she should not be sanctioned pursuant to FED. R. BANKR. P. 9011(c); and it is further.

ORDERED that the Clerk of this Court shall serve a copy of this order on the persons listed below so that they may determine whether to attend and participate in such hearing.

Signed this the 5th day of June, 2002.


DENNIS MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

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ORDER DENYING MOTION TO SUPPLEMENT
RECORD AND SETTING HEARING

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